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3 THE SPIVAK LAW FIRM
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8 Attorney for Plaintiff,
9 JOHN BURNELL
10 (additional attorneys listed on next page)

11 **IN THE UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 JOHN BURNELL, JACK
14 POLLOCK, and all others similarly
15 situated,

16 *Plaintiff(s),*

17 vs.

18 SWIFT TRANSPORTATION CO.
19 OF ARIZONA, LLC,

20 *Defendant(s).*

Case No.: EDCV 12-00692-VAP OPx
Related Case: 5:10-CV-00809-VAP (OPx)
(Assigned to the Hon. Virginia A. Phillips)

21 **DECLARATION OF DAVID SPIVAK**
22 **IN SUPPORT OF PLAINTIFFS'**
23 **MOTION FOR FINAL APPROVAL**
24 **OF CLASS ACTION SETTLEMENT**

25 Date: December 2, 2019
26 Time: 2:00 p.m.
27 Room: 8A

28 Complaint Filed: March 22, 2010
Trial Date: None Set



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*Burnell v. Swift Transportation Co. of
Arizona, LLC*

1

Declaration of David Spivak ISO Plaintiffs'
Motion for Final Approval

ADDITIONAL ATTORNEY FOR PLAINTIFF JOHN BURNELL

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2

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DECLARATION OF DAVID SPIVAK

I, DAVID SPIVAK, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and the U.S. District Court for the Central District of California and am an attorney of record for Plaintiff John Burnell (“Burnell”) in this action against defendant Swift Transportation Co. of Arizona, LLC (“Defendant”).

2. Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

Procedural Background

3. In or about June of 2009, my firm along with the Law Office of Shaun Setareh, P.C. and the Law Office of Louis Benowitz retained Burnell for his individual and putative class claims against Defendant.

4. In or about March of 2010, my firm filed the complaint on behalf of Burnell in the Superior Court of California, County of San Bernardino, before Defendant subsequently removed the lawsuit to this Court.

5. In or about October of 2010, my firm along with the Law Office of Shaun Setareh, P.C. and the Law Office of Louis Benowitz retained Jack Pollock (“Pollock”) for his individual and putative class claims against Defendant and the parties agreed to file a First Amended Complaint adding Pollock as an additional plaintiff.

6. On August 16, 2012, Burnell and Pollock filed a Notice of Association of Counsel to associate the law offices of Marlin & Saltzman as counsel of record (ECF Docket No. 48).

7. In or about July of 2013 and by stipulation of the parties, the Court withdrew Pollock as a named plaintiff due to his unavailability to continue in the role of a representative plaintiff (ECF Docket No. 105). However, Pollock remains a putative class member.



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Background of Counsel

8. In 1991, I earned a Bachelor of the Arts degree with a major in Political Science from the University of California at Berkeley. In 1995, I earned a Juris Doctor degree from Southwestern University School of Law.

9. In December of 1995, Supreme Court for the State of California admitted me as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this State. On May 11, 2012, I became admitted to the District of Columbia Bar. On February 21, 2013, I became admitted to the New York bar.

10. I am experienced in handling employment law matters and specifically wage and hour cases. I have been practicing law since 1995. My experience has been almost exclusively in the area of employment law representing employees with claims of wrongful termination, harassment, whistleblower retaliation, discrimination, wage and hour, and family and medical leave violations. I have tried many cases before California and federal courts, government agencies and neutral arbitrators. I am a member of the California Employment Lawyers Association (CELA).

11. Since I started practicing law, I have tried many cases before courts, arbitrators and government agencies. Some of my cases are:

A. *Ricardo Sandoval v. Dept. of Treasury*, United States District Court, Southern District of California (the Honorable Judith Keep presiding), 1998. Plaintiffs Special Agent for the U. S. Customs Service alleged discrimination and retaliation in promotions and discipline. The jury awarded compensatory damages. Court subsequently awarded additional back pay and gave Plaintiffs a retroactive promotion. See “Lawsuit Puts Customs Service on Trial: Agent Alleges Corruption, White Supremacist Cabal” by Valerie Alvord, *San Diego Union-Tribune*, April 29, 1998; “Customs Agent Is Awarded \$200,000: Jury Says He Faced Bias And Retaliation” by Valerie Alvord, *San Diego Union-Tribune*, May 16, 1998.



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1 B. *Jorge Guzman v. Department of Justice*, United States District
2 Court, Central District of California (the Honorable Lourdes Baird presiding),
3 1999. Plaintiffs Special Agent for the Immigration and Naturalization Service
4 alleged racial discrimination, retaliation and police brutality by agents of the Office
5 of the Inspector General. Jury found the Defendants liable. Case settled shortly
6 before the damages phase. *See* “U.S. to Pay \$400,000 to INS Agent in Bias Suit;
7 Courts: Complaint says he suffered 10 years of harassment on the job because he
8 is Latino, including falsified charges” by Patrick J. McDonnell, *Los Angeles Times*,
9 January 21, 1999.

10 C. *Dr. Perry Crouch v. SHIELDS*, Los Angeles Superior Court,
11 Compton (the Honorable Michael Rutberg presiding), 2001. Plaintiff
12 whistleblower brought civil rights claims and wrongful termination claims against
13 employer in a month-long jury trial. The jury awarded compensatory and punitive
14 damages. *See* “Activist Says Criticism of Rail Plan Cost His Job” by Dan Weikel,
15 *Los Angeles Times*, September 28, 2000; “Punitive Damages Awarded to Fired
16 Social Worker” by Dan Weikel, *Los Angeles Times*, June 10, 2000; “A
17 Whistleblower’s Revenge” by Susan Goldsmith, *New Times Los Angeles*, June 8,
18 2000.

19 D. *Imagraph, Inc. (Steve Shiffman) v. Mohamed T. Nehmeh*,
20 Orange County Superior Court, Central Justice Center (the Honorable Kirk H.
21 Nakamura presiding), 2004. Plaintiffs, who I represented *pro bono* sought the
22 return of \$45,000.00 he paid to an attorney escrow officer who subsequently
23 absconded with the money. The jury awarded compensatory damages. The
24 Judgment with interest is now far in excess of that amount. Soon after this case was
25 litigated, the State Bar of California awarded me the Wiley W. Manuel Award for
26 Pro Bono Legal Services.

27 E. *Rick Pierce v. Department of Treasury*, Merit Systems
28 Protection Board (1999). Administrative Judge awarded compensatory damages to



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1 wrongfully terminated Customs Agent, followed by an award of Attorneys' fees
2 and costs.

3 F. *Richard Wamel v. Ocelot Engineering Co.*, Judicate West
4 before the Honorable Robert Polis (ret.) (2008). In that case, I represented a victim
5 of FMLA violations and wrongful termination against his former employer. The
6 Neutral Arbitrator awarded compensatory and liquidated damages. The claims for
7 damages, attorney's fees and costs were resolved shortly thereafter by means of a
8 confidential settlement.

9 G. *Alina Ghrdilyan v. RJ Financial, Inc.*, et al., LA Superior Court
10 case no. BC430633 (2012), the Honorable Ronald Sohigian presiding. To my
11 knowledge, this case is the first and only case to be successfully prosecuted through
12 trial under the Labor Code Private Attorney Generals Act of 2004, Labor Code §§
13 2698, *et seq.* on behalf of Plaintiffs and other aggrieved employees against someone
14 other than an employer for civil penalties including unpaid wages. The case
15 involves claims of unpaid overtime, unprovided rest and meal periods, unpaid
16 vacation, untimely interval and final wages, and unreimbursed expenses. For my
17 work in that case, the Court awarded me an hourly rate of \$600.00 hour based on
18 my skill and experience.

19 12. Since 2007, I have prosecuted several traditional wage & hour class
20 actions as the sole or primary attorney for plaintiffs, including *Pudelwitts v. Regent*
21 *Parking, Inc.*, *Singery v. Quality Vessel Engineering*, *Tesillo v. LA Executive*
22 *Towing Service, Inc.*, and *Madison v. The Limousine Connection*. One such case is
23 *Jose Tapia v. Mangen Group, Inc.*, LASC case no. BC377114, a garden-variety
24 wage & hour class action with many of the same claims at issue in this case. The
25 Honorable Jane Johnson of the Los Angeles Superior Court, presiding over the
26 motion for final approval of the settlement class action settlement in *Tapia v.*
27 *Mangen*, had no quarrel with an hourly rate of \$525.00 for my services.

28 13. In my representation of employees, I have prosecuted several lawsuits



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6

Declaration of David Spivak ISO Plaintiffs'
Motion for Final Approval

1 on behalf of employees with claims of rest and meal period and overtime violations
2 or other wage claims

3 14. I have been involved in the prosecution of numerous wage and hour
4 class actions at various stages of litigation. A small sampling of the wage and hour
5 class action cases in which I have been counsel of record is as follows:

6 A. *Alafa v. Custom Built Personal Training, Inc.*, Tulare County
7 Superior Court, Case No. VCU-245496 (appointed Class Counsel and granted final
8 approval class action settlement on behalf of assistant fitness manager employees).

9 B. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case
10 No. 30-2010-000382146 (appointed Class Counsel and granted final approval of
11 class action settlement by the court on behalf of nonexempt employees).

12 C. *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles
13 Sup.Ct., Case No. BC465017 (appointed Class Counsel and granted final approval
14 of class action settlement on behalf of merchandiser employees).

15 D. *Deckard v. MSL Community Management LLC*, Riverside
16 County Superior Court, Case No. RIC1204182 (appointed Class Counsel and
17 granted final approval of class action settlement on behalf of caregivers and
18 medical technicians).

19 E. *DiCato v. Francesca's Collections, Inc.*, San Diego County
20 Superior Court, Case No. 37-2012-00094401-CU-OE-CTL (appointed Class
21 Counsel and granted final approval of class action settlement on behalf of boutique
22 manager and assistant manager employees).

23 F. *Evans v. Equinox, et al.*, Los Angeles Sup.Ct., Case No.
24 BC440058 (appointed Class Counsel and granted final approval of class action
25 settlement on behalf of personal trainer employees).

26 G. *Fischer v. National Distribution Centers*, Riverside County
27 Superior Court, Case No. RIC1114952 (appointed Class Counsel and granted final
28 approval of class action settlement on behalf of hourly warehouse employees).



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Arizona, LLC*

7

Declaration of David Spivak ISO Plaintiffs'
Motion for Final Approval

1 H. *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case
2 No. BC480808 (appointed Class Counsel and granted final approval of class action
3 settlement on behalf of hourly employees).

4 I. *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct.,
5 Case No. 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted
6 final approval of class action settlement on behalf of medical devices employees).

7 J. *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino
8 Superior Court, Case No. CIVDS1500146 (appointed Class Counsel and granted
9 final approval of class action settlement on behalf of non-exempt hourly employees
10 excluding truck drivers).

11 K. *La Fleur v. Medical Management International, Inc.*, United
12 States District Court, Central District of California, Case No. EDCV13-00398-
13 VAP (appointed Class Counsel and granted final approval of class action settlement
14 on behalf of practice managers).

15 L. *Lynch, et al. v. American Guard Services*, Los Angeles Superior
16 Court, Case No. BC462681 (appointed Class Counsel and granted final approval
17 of class action settlement on behalf of security guard employees).

18 M. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court,
19 Case No. S-1500-CV-282679 (appointed Class Counsel and granted final approval
20 of class action settlement on behalf of dairy and agricultural laborers).

21 N. *Montes v. Branam Enterprises, Inc.*, Los Angeles Sup.Ct. Case
22 No. BC442608 (appointed Class Counsel and granted final approval of class action
23 settlement on behalf of call concert rigging employees).

24 O. *Nardone v. Sequoia Beverage Company, LP*, Tulare County
25 Superior Court, Case No. VCU-248370 (appointed Class Counsel and granted final
26 approval of class action settlement by the court on behalf of hourly employees).

27 P. *Ogbuehi v. Comcast of California/Colorado/Florida/Oregon,*
28 *Inc.*, United States District Court, Eastern District of California, Case No.



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Arizona, LLC*

8

Declaration of David Spivak ISO Plaintiffs'
Motion for Final Approval

1 EDCV13-00672-KJM-KJN (appointed Class Counsel and granted final approval
2 of class action settlement on behalf of virtual customer account executives).

3 Q. *Rosen v. Image Transfer*, Los Angeles Superior Court, Case No.
4 BC511072 (appointed Class Counsel and granted final approval of class action
5 settlement on behalf of bobtail truck drivers).

6 R. *Sandoval v. Rite Aid Corp.*, Los Angeles Superior Court, Case
7 No. BC431249 (granted class certification through contested motion and appointed
8 Class Counsel in case on behalf of former pharmacy employees based on late final
9 wage payments in violation of Labor Code §§ 201–203).

10 S. *Celeste Shaw and Dejan Nagl v. Interthinx, Inc.*, United States
11 District Court for the District of Colorado, Case No. 13-CV-01229-REB-BNB
12 (appointed Class Counsel and granted final approval of class action settlement by
13 the court on behalf of auditor employees).

14 T. *Stucker v. L'Oreal*, Los Angeles Sup.Ct. Case No. BC456080
15 (appointed Class Counsel and granted final approval of class action settlement
16 involving alleged misclassification of sales employees and unpaid vacation pay).

17 U. *Valdez v. Healthcare Services Group, Inc.*, Los Angeles
18 Sup.Ct., Case No. BC462917 (appointed Class Counsel and granted final approval
19 of class action settlement on behalf of service account manager employees).

20 V. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior
21 Court, Case No. BC421485 (granted class certification through contested motion
22 and appointed Class Counsel in case on behalf of former security workers based on
23 late final wage payments in violation of Labor Code §§ 201–203).

24 W. *Vang v. Burlington Coat Factory Corporation*, United States
25 District Court Central District of California, Case No. 09-CV-08061-CAS-JCx
26 (appointed Class Counsel and granted final approval of class action settlement by
27 the court on behalf of assistant store manager employees).

28 X. *Volney-Parris v. Southern California Edison Company*, Los



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1 Angeles Superior Court, Case No. BC493038 (appointed Class Counsel and
2 granted final approval of class action settlement on behalf of customer specialist
3 employees).

4 Y. *Wade and Gammel, et al. v. Defender Security Company*,
5 Central District of California, Case No. 2:15-cv-7142 CAS-JC (appointed Class
6 Counsel and granted final approval class action settlement on behalf of security
7 technicians).

8 Z. *White v. 20/20 Communications, Inc.*, San Bernardino County
9 Superior Court, Case No. CIVRS1301718 (appointed Class Counsel and granted
10 final approval of class action settlement on behalf of sales associates).

11 ***Fees & Costs***

12 15. In this case, my firm currently has a total lodestar of approximately
13 \$40,625.83. A general summary showing the number of hours of work performed
14 by each attorney and paralegal of my firm is set forth below:

15

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Pre-Multiplier Lodestar</u>
David Spivak (23rd Year Attorney)	48.50	\$700	\$33,950.00
Breck Oyama (11th Year Paralegal)	22.08	\$300	\$6,625.00
Lizzett Cortez (7th Year Paralegal)	0.08	\$250	\$20.83
Christopher Martinez (Former 2nd Year Legal Assistant)	0.03	\$150	\$5.00
Jennifer Chang (Former 1st Year Legal Assistant)	0.17	\$150	\$25.00
Totals	70.87		\$40,625.83

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25 If requested, I will make unredacted copies of my firm's time records available to
26 the Court for *in camera* inspection. My firm performed work in this matter against
27 Defendant since Burnell was retained in or about 2009. Among other things, my
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Motion for Final Approval

1 firm: (1) Conducted initial investigations and developed the theories and facts to
2 support the Burnell and Pollock's claims as to Defendant's alleged violations; (2)
3 Researched and drafted Burnell's initial Complaint and Burnell and Pollock's First
4 Amended Complaint; (3) Met and conferred with Defendant in order to prepare
5 and file the parties' initial Joint Rule 26(f) Report; (4) Prepared the Burnell's initial
6 disclosures; (5) Prepared and Propounded the Burnell's initial formal discovery
7 requests to Defendant; (6) Appeared on behalf of the Burnell at the initial
8 scheduling conference before this Court; and (7) Prepared and filed status reports
9 with this Court during the stay of the matter pending the decision in *Brinker*.

10 16. My firm's litigation costs to date total \$895.37. True and correct
11 copies of the costs and expense records of my firm are collectively attached as
12 **Exhibit 1** to this declaration with minor redactions to protect the confidentiality of
13 sensitive, privileged information. I will make unredacted copies of such records
14 available to the Court for in camera inspection upon its request.

15 I declare under the penalty of perjury of the laws of the United States of
16 America that the foregoing is true and correct to the best of my knowledge.

17 Executed on Monday, November 18, 2019 at Encino, California.

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19 /s/ David Spivak
20 DAVID SPIVAK
21 Declarant
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EXHIBIT 1

INVOICE

INVOICE NUMBER: 17
INVOICE DATE: NOVEMBER 13, 2019

DUE DATE: NOVEMBER 13, 2019
PAYMENT TERMS: DUE ON RECEIPT

FROM: THE SPIVAK LAW FIRM
16530 Ventura Blvd.
Suite 312
Encino, CA 91436

TO: Burnell, John (Swift Transportation)

DATE	PROJECT	DESCRIPTION	QTY	RATE	AMOUNT
AUG-06-09	BO	Copies from May and June 2009, 199 pages			\$49.75
SEP-01-09	DGS	Postage for August 2, 2009 to September 1, 2009			\$10.50
SEP-22-09	BO	Photocopies from July 2009 to August 2009, 187 copies at \$.25/copy	187.00	\$0.25	\$46.75
OCT-26-09	BO	Rand McNally order [REDACTED] for RouteTools CD program			\$69.24
DEC-09-09	BO	Photocopies September 2009, pages: 45	45.00	\$0.25	\$11.25
JAN-09-10	DGS	Check # [REDACTED] to Swift for copies of personnel file	200.00	\$0.25	\$50.00
FEB-03-10	BO	Postage from September 2, 2009 to October 1, 2009			\$18.75
APR-08-10	BO	Postage for March 2, 2010 to April 1, 2010			\$4.31
APR-12-10	BO	Check No. [REDACTED] for filing of S&C with San Bernardino SC			\$355.00
MAY-03-10	BO	Postage for April 2, 2010 to May 1, 2010			\$10.62
MAY-10-10	BO	Photocopies for February to April 2010	96.00	\$0.25	\$24.00
JUN-14-10	BO	Photocopies from May 2010	12.00	\$0.25	\$3.00
JUN-18-10	BO	Fedex receipt from chambers copies of stip and order dismiss			\$16.83
JUN-23-10	BO	Intelius receipt # [REDACTED] re people search report [REDACTED] addresses			\$1.95
JUN-30-10	BO	Intelius reverse phone lookup [REDACTED], receipt # [REDACTED]			\$4.99
JUL-02-10	BO	Postage for June 2, 2010 to July 1, 2010			\$2.20
JUL-21-10	BO	Postage for May 2, 2010 to June 1, 2010			\$1.86

DATE	PROJECT	DESCRIPTION	QTY	RATE	AMOUNT
AUG-05-10	BO	Postage for July 2, 2010 to August 1, 2010			\$0.44
AUG-11-10	BO	Fedex shipment chambers copy joint rule 26f report			\$16.45
SEP-09-10	BO	Postage for August 2, 2010 to September 1, 2010			\$2.51
SEP-13-10	DGS	scheduling conference parking			\$3.00
SEP-13-10	DGS	scheduling conference mileage			\$66.70
SEP-24-10	BO	Photocopies from June 2010 to August 2010	46.00	\$0.25	\$11.50
OCT-06-10	BO	Fedex chambers copy re stip file 1ac			\$16.52
OCT-21-10	BO	Pacer records request re case update on sanders v swift			\$0.16
OCT-27-10	BO	Pacer records request re sanders case			\$0.32
NOV-10-10	BO	Pacer records re sanders v swift case			\$0.48
JAN-05-11	BO	Photocopies from September 2010 to October 2010	36.00	\$0.25	\$9.00
JUL-01-11	BO	Fedex chambers copy			\$18.71
AUG-31-11	BO	Photocopies from April through July 2011 (AUB invoices)	4.00	\$0.25	\$1.00
DEC-02-11	BO	Postage for November 2, 2011 to December 1, 2011			\$0.44
JAN-23-12	BO	Photocopies November 2011	4.00	\$0.25	\$1.00
APR-13-12	BO	onelegal invoice # [REDACTED] re courtesy copies notice decision brinker			\$19.95
MAY-01-12	BO	pacer download stip stay			\$1.40
SEP-17-12	BO	Pacer fees re download order [REDACTED]			\$1.80
DEC-04-12	BO	Postage from November 2, 2012 to December 1, 2012			\$0.45
FEB-13-13	BO	Return orig docs to [REDACTED]			\$12.87
SEP-17-13	BO	Photocopies August 2013	10.00	\$0.25	\$2.50
DEC-13-13	BO	Fedex return orig docs burnell			\$12.77
FEB-06-14	DGS	Photocopies for December 2013	2.00	\$0.25	\$0.50
OCT-15-15	BO	Pacer 9/1-10/15			\$1.90
MAR-01-16	BO	Pacer downloads February 2016			\$0.30
SEP-04-18	DGS	Pacer Downloads Aug 2018			\$8.70
AUG-05-19	BO	Pacer download July 2019			\$3.00
		Total hours for this invoice	0:00		
		Total amount of this invoice			\$895.37